for an explanation. I think the words 'who has in his possession or conveys' must be read with the words 'shall, if he fails to account satisfactorily how he came by the same' and that therefore the having in possession and the failing to account must be contemporaneous. I reach this conclusion not only from reading the section as a whole but also from those cases in which this section has been discussed in the Courts.

Further, another objection to a conviction under section 35 (i) of the Minor Offences Enactment is the case of *Regina v. Kwek Chang Seng*[2], which is a Court of Appeal decision, in which it was held that possession under section 35 (i) of the Indian Act XIII of 1856, which is similar to section 35 (i) of our Minor Offences Enactment, only applies to possession in the streets or in a public place and not to possession in a house.

Accordingly I quash the conviction and sentence under section 35 (i) of the Minor Offences Enactment (Cap. 46).

Under section 316 (b) of the Criminal Procedure Code I would have altered the finding to one of a conviction under section 411 of the Penal Code were it not for the fact that the appellant has had no chance to make his defence to such a charge. In view of that fact I order a new trial before another District Judge, the charge to be under section 411 of the Penal Code. No doubt that District Judge will give due weight to what I have said as regards the evidence that this gear-box Exhibit P2 was proved to be stolen property. He should of course bear in mind that he will see and hear the witnesses at the new trial and he must make up his own mind as to their credibility.

Pending the new trial the appellant is granted bail in the sum of five hundred dollars, with one surety.

Order Accordingly.

SULONG bin NAIN vs. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan C.J., Malayan Union, Murray Aynsley C.J. Singapore, & Bostock Hill, J.)July 25, 1947]

Public Order and Safety Proclamation, Section 3 (1) — Offence of carrying Arms — Whether person carrying Arms with a view to handing them to the Police is guilty of the Offence — Absolute Prohibition — Opinions of Assessors regarding Sentence — Criminal Procedure Code, F. M. S. Section 199.

This was an appeal against the conviction of the appellant for the offence of carrying arms, to wit two hand grenades, contrary to Section 3 (1) of the Public Order and Safety Proclamation. The facts were that the appellant when arrested, was carrying a bag, and in the bag, underneath a sarong; there were two hand grenades not fitted with fuses, and also two fuses which would fit exactly the two hand grenades. A police armourer gave evidence to the effect that the two hand grenades were in a clean condition, that the two fuses were complete with detonators and were in a serviceable condition. The appellant gave evidence at the trial and stated that when he was arrested he was carrying these two hand grenades with the intention of handing them over to the Police. After summing up the learned trial Judge left two questions for the opinion of the assessors:—(1) Was the appellant guilty of carrying arms? (2) With what intention was he carrying them? Both the assessors found the appellant guilty of carrying arms but stated that in their opinion he was carrying arms with a view to handing them to the Police. The learned trial Judge disagreed with that opinion and convicted the accused. Having convicted and sentenced the appellant he reserved certain questions for the Court of Appeal. The following questions were eventually argued before the Court of Appeal:—

(a) Whether the learned trial Judge was right in leaving the question of intention to the assessors; (b) Having done so, was he bound by their views in assessing sentence; (c) Whether a person carrying arms with a view to handing them to the Police is guilty of an offence against Section 3 (1) of the Public Order and Safety Proclamation; (d) Whether the evidence before the Court established the articles carried by the appellant were hand grenades.

Held, (1) that Section 3 (1) of the Public Order and Safety Proclamation prohibits absolutely the carrying of arms and that it is not necessary to prove any ulterior intention to establish that offence; (2) that therefore a person carrying arms with a view to handing them to the Police is guilty of an offence against Section 3 (1) of the Public Order and Safety Proclamation; (3) that the learned trial Judge was wrong in leaving the question of intention to the assessors; (4) that a Judge trying a case with the aid of assessors is not bound by any opinions that may be expressed by the assessors regarding the sentence as Section 199 of the Criminal Procedure Code makes it clear that the question of punishment is for one for the Judge alone; (5) that there was no doubt that what the appellant was carrying was two grenade parts and two fuses which make up two complete hand grenades and so on the facts the accused was rightly convicted of carrying the two hand grenades.

CRIMINAL APPEAL.

E. D. Shearn for the Appellant.

C. H. Whitton for the Respondent.

The judgment of the Court was given by :—

Willan, C. J. : — This is an appeal against the conviction of the appellant for the offence of carrying arms — to wit two hand grenades — contrary to sub-section (1) of section 3 of the Public Order and Safety Proclamation No. 50.

Since one of the prescribed punishments for that offence is death, the appellant was tried with the aid of Assessors in accordance with sub-section (1) of section 184 of the Criminal Procedure Code. He was convicted and sentenced to a term of imprisonment.

The facts are not disputed, and it was established at the trial that the appellant, when arrested, was carrying a bag, and in the bag, underneath a sarong, there were two hand grenades not fitted with fuses, and also two fuses which would fit exactly the two

hand grenades. A police armourer gave evidence to the effect that the two hand grenades were in a clean condition; that the two fuses were complete with detonators and were in a serviceable condition.

The appellant gave evidence at the trial and stated that when he was arrested he was carrying these two hand grenades with the intention of handing them over to the police.

After summing-up the learned trial Judge left two questions for the opinion of the Assessors :—

(1) Was the appellant guilty of carrying arms?

(2) With what intention was he carrying them?

Both the Assessors found the appellant guilty of carrying arms but stated that in their opinion he was carrying the arms with a view to handing them to the police.

The learned trial Judge disagreed with that opinion, and in his grounds of judgment, stated as follows :—

> Both the Assessors found the accused guilty of carrying arms but expressed the opinion that he was carrying these hand grenades to the police station for the purpose of surrendering them there at the time of his arrest. I was in no doubt at all that accused took these articles to Seremban for purposes of his own; that he had no intention of surrendering them to the police station; that he knew what the articles were and what their purpose was; and that he was guilty of the offence charged in the fullest sense.

Having convicted and sentenced the appellant the learned trial Judge reserved the following questions to the Court of Appeal :—

(a) Whether he was right in leaving the question of intention to the Assessors;

(b) Having done so was he bound by their views in assessing sentence.

The appeal, which had been before the Court of Appeal previously, was adjourned for the following questions raised by the trial Judge and by the Court of Appeal to be argued :—

(1) Whether the learned trial Judge was right in leaving the question of intention to the Assessors;

(2) Having done so, was he bound by their views in assessing sentence;

(3) Whether a person carrying arms with a view to handing them to the police is guilty of an offence against section 3 (1) of the Public Order and Safety Proclamation No. 50.

Mr. Shearn, who appeared for the appellant, also raised the following additional question :—

(4) Whether the evidence before the Court established the articles carried by the appellant were hand grenades.

Dealing with question (3) first, this raises the important issue as to what *mens rea* is an essential element in constituting an offence against section 3 (1) of the Public Order and Safety Proclamation. As to this, the general principle stated in *Maxwell* on Interpretation of Statutes, 9th edition, page 105, is that :—

> A statute however comprehensive and unqualified it be in its language, is usually understood as silently requiring that this element should be imported into it, unless a contrary intention be expressed or implied.

But the application of that general principle must turn on the wording and governing intention of the particular statute. This is clear from *Craies* on Statute Law, 3rd edition, page 450 :—

> Upon the principles thus laid down there seems to be general judicial agreement, and the whole difficulty arises on their application to particular definitions of offences; i.e. in deciding whether the statute prohibits absolutely the acts defined as constituting an offence, or whether the prohibition is to be read with the common law qualification. The application must in every case turn on the wording of the particular enactment, or, in case of ambiguity, upon the governing intention of the Act in which it is contained, or set of Acts relating to the subject-matter.

With regard to the wording of section 3 (1) of the Public Order and Safety Proclamation it is material that in other parts of that Proclamation such words as "knowingly" and "intent" (in section 4) and "wrongfully" in section 5 (1) are used. Further, section 5 (2) exempts any person from criminal liability under section 5 (1) if he proves the facts required by section 5 (2). In addition it must be borne in mind that by sub-section (2) of section 3 any person may carry arms provided he obtains a permit to do so from the Officer Commanding the Civil Affairs (Malaya) Police Force — now, by the Transfer of Powers and Interpretation Ordinance, 1946, the Commissioner of Police.

As to the intention of the Public Order and Safety Proclamation, it came into force on the 31st of January, 1946, during the period of the Military Administration of Malaya. It repealed the Explosives and Firearms Proclamation No. 19, which was also promulgated during the same period. That latter Proclamation required all persons, except officers and members of the British and Allied Forces, the Police Force, and certain Resistance Forces, to surrender any firearms and explosives in their possession by a specified date and failure to do so became a criminal offence. This

was an offence additional to the ordinary offence for unlawful possession of firearms.

We cannot ignore the fact that Malaya, having been a theatre of war, abandoned arms and other implements of war had come into the possession of a large number of persons who used these arms etc. for unlawful purposes, thus creating a state of lawlessness throughout the country. To remedy that state of affairs the Explosives and Firearms Proclamation was promulgated as an attempt to force the public to surrender any firearms and explosives in their possession to the British Military Administration Authorities by a certain date. After that date any one found in possession of any firearm or explosive was guilty of a criminal offence for not surrendering it by the specified date, and was also guilty of an offence against the ordinary law for having in his possession an unlicensed firearm or explosive. Thus the intention of the Explosives and Firearms Proclamation was to obtain from members of the Public the surrender of all firearms and explosives in their possession.

We are fully aware of the number of crimes of violence committed in which firearms are used, and therefore have no doubt that the Public Order and Safety Proclamation, which repealed the Explosives and Firearms Proclamation, was promulgated to reduce crimes of violence by prescribing deterrent penalties in respect of all persons carrying arms. Hence we have no doubt that this was an attempt by the British Military Administration to reduce the state of lawlessness which existed throughout the country. Therefore, bearing in mind :—

(a) That all persons had had adequate notice by the Explosives and Firearms Proclamation that they must surrender any firearms and explosives in their possession to the proper authorities by a certain date;

(b) The state of unlawfulness which existed in the country at the time the Public Order and Safety Proclamation was promulgated;

(c) That the Malayan Union Government, by section 87 of the Malayan Union Order in Council and by the Transfer of Powers and Interpretation Ordinance, 1946, continued that Proclamation in force unaltered, except for an amendment to section 5 (1) thereof (that amendment does not relate to the offence of carrying arms);

(d) The strict wording of section 3 (1), when compared with other parts of the same Proclamation,

we hold that section 3 (1) of the Public Order and Safety Proclamation prohibits absolutely the carrying of arms and that it is not necessary to prove any ulterior intention to establish that offence.

Having held that section 3 (1) of the Public Order and Safety Proclamation prohibits absolutely the carrying of arms, we are now required to answer question (3) set out above — i.e. whether a person carrying arms with a view to handing them to the police is guilty under that section.

As to this Mr. Shearn argued that if the answer to that question is in the affirmative, then a person, who picks up a revolver which he finds lying on the road-side and takes it to the police station to surrender it, will be guilty of an offence. He gave other examples, but the one just mentioned suffices to show that unless a person who is found carrying arms with a good conscience is exempt under any provision of law excepting him from criminal liability, he would be committing an offence under section 3 (1) of the Public Order and Safety Proclamation.

Regarding exemption from criminal liability, Mr. Shearn relied on sections 76 and 79 of the Penal Code. These two sections are contained in Chapter IV of that Code — i.e. the Chapter headed "General Exceptions". By virtue of section 40 of the same Code the provisions of that Chapter apply to offences punishable under that Code or under any other law. Therefore the provisions of that Chapter apply to an offence punishable under section 3 (1) of the Public Order and Safety Proclamation.

Sections 76 and 79 of the Penal Code are as follows :—

> 76. Nothing is an offence which is done by a person who is, or who, by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be, bound by law to do it.
>
> 79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it.

At the trial the appellant, as already stated, said that he was taking the two hand grenades to hand them over to the police, and he gave as his reason for this that there was a circular to the effect that if any person delivered arms to the police he would be rewarded. No evidence was adduced at the trial to prove that such a circular had ever been issued.

Mr. Shearn argued that if this evidence was believed then, even though section 3 (1) of the Public Order and Safety Proclamation is held to prohibit absolutely the carrying of arms, the appellant could not be guilty thereunder because he had acted in good

faith in the belief that he was bound by law to carry the two hand grenades to surrender them to the police. Mr. Shearn went further and argued that even if such a circular had never been issued the appellant would still not be liable, if his defence that he was carrying the arms to surrender them to the police was believed, as it was by the Assessors, because he would come under either of the exceptions contained in section 76 or section 79 of the Penal Code, particularly the latter.

It is clear from the wording of sections 76 and 79 that either of these sections only applies when there is a mistake of fact. A mistake of law does not excuse. Now mistake, as this term is understood in jurisprudence, is used in the sense of misconception or error of judgment not intended to produce the result attained. As stated in the Penal Law of British India by Gour, 5th edition, page 265 :—

> "Such a mistake may or may not be due to forgetfulness, ignorance, imperfect information, or faulty ratiocination. It may be due to chance, negligence, stupidity or even superstition, but it must not be due to design, pre-arrangement or pre-concert".

If a person is deliberately carrying arms to the police station there is no mistake as that term is used in jurisprudence. He knows what he is carrying and he is intentionally carrying those arms. Accordingly he cannot claim the protection of either section 76 or section 79 of the Penal Code.

Therefore our answer to question (3) set out above — i.e. whether a person carrying arms with a view to handing them to the police is guilty of an offence against section 3 (1) of the Public Order and Safety Proclamation — is in the affirmative.

Having so decided we add that in our view the Legislature should seriously consider the advisability of amending the Proclamation so that persons who can prove they are carrying arms with the intention of surrendering them to the proper authorities should not be criminally liable. Until such an amendment is made, persons who do so must rely on the Public Prosecutor not to prosecute them.

Having disposed of question (3) we turn now to questions (1) and (2), which are :—

(1) Whether the learned trial Judge was right in leaving the question of intention to the Assessors;

(2) Having done so, was he bound by their views in assessing sentence.

Having held that the question of intention does not enter into an offence under section 3 (1) of the Public Order and Safety Proclamation, the answer to question (1) must be in the negative.

As regards question (2), the quantum of punishment is one for the Judge alone — see section 199 of the Criminal Procedure Code in the Chapter dealing with trials before a Judge with the aid of Assessors. It reads as follows :—

> If the accused is convicted the Court shall pass sentence according to law.

Thus it is clear that it is the Judge alone who assesses the sentence. If the Assessors of their own volition indicate, for instance, that although they find an accused guilty they consider he should be dealt with mercifully, or if, as in this case, the Judge left a question to them which had a bearing on the sentence, we hold that the Judge is not bound by the opinions so expressed by the Assessors. Therefore the learned trial Judge in this case was right in not holding himself bound by their opinions on this particular matter, and our answer to question (2) is in the negative.

In order that it may not appear that any injustice has been done in this case we add that in our view the learned trial Judge was perfectly right on the evidence before him in rejecting the view that the appellant had any intention of surrendering these two hand grenades to the police.

As stated by the learned trial Judge in his grounds of decision, the appellant, when arrested by the police, made no protest that he was taking the two hand grenades to the police station, and he actually resisted arrest. These facts are not consistent with his alleged intention.

Lastly Mr. Shearn argued that since the two hand grenades were not found fitted with fuses, they were not in fact grenades and therefore did not come within the definition of "arms" in section 2 of the Public Order and Safety Proclamation. That definition reads :—

> 'Arms' includes any firearm, air-gun, air pistol, automatic gun, automatic pistol and any other kind of gun or pistol from which any shot, bullet or other missile can be discharged or noxious fumes can be emitted, and any kind of firearm whether of the same kind as those enumerated or not and also includes any hand grenade.

Mr. Shearn based his argument on this question (4) above — i.e. whether the evidence before the Court established the articles carried by the appellant were hand grenades — that since the fuses were not fitted into the grenade parts of the hand grenades, those latter parts were not hand grenades. In support of this contention he drew our attention to the definitions of

the word "grenade" in a number of standard works. For instance in the Encyclopaedia Britannica "grenade" is defined as follows :—

> A small spherical explosive vessel thrown by hand. Hand grenades were used in war in the 16th century....

In the pocket Oxford dictionary the same word is defined as "an explosive shell thrown by hand".

From these definitions Mr. Shearn argued that a hand grenade must be explosive and that in this case the two hand grenades could not be explosive until they were fitted with fuses and that when found by the police in the bag carried by the appellant they were not so fitted.

We are unable to accept this argument, because there is no doubt that what the appellant was carrying was two grenade parts and two fuses which make up two complete hand grenades. It would have taken very little time to fit the fuses into the grenade parts. To decide otherwise would mean that a person could carry the grenade parts and the fuses separately with impunity, because he could wait until the very last minute before he wished to use them before fitting the fuses. Accordingly the evidence at the trial disclosed that the articles carried by the appellant were hand grenades.

This disposes of all the questions we were required to consider and answer. In the result this appeal is dismissed.

Appeal Dismissed.

PUBLIC PROSECUTOR v. SAYER.

[Orig. Crim. Juris. (Spenser Wilkinson, J.) June 20, 1947]

Penal Code, Section 71 — Offence made up of many parts — Causing the death of more than one person in one and the same accident — Penal Code Section 304A.

In this case the accused was charged with six separate charges each of which alleged that he caused the death of a named person at 8.30 p.m. on the 26th December 1946 at Batu Road, Kuala Lumpur by doing a rash act not amounting to culpable homicide, to wit, by driving a motor lorry No. B.A. 486330 rashly. The particulars of rashness given in each charge were word for word the same, and the only difference between each of the charges was in the name of the person whose death was alleged to have been caused.

Held, (1) that where a person is driving a motor vehicle rashly, and in so doing simultaneously knocks down several persons thereby causing the death of more than one of them, then there is only one offence and it would be proper to frame one charge to the effect that the accused caused the death of A, B, C, etc. by a rash act and was thereby punishable under Section 304 A of the Penal Code; (2) that where several deaths are caused not simultaneously but one very soon after another the test to be applied in order to determine in such cases whether one or more offences have been committed is to ask the question "Have all these deaths been caused in one and the same accident?" using these words not in any technical but in their ordinary everyday sense.

Cases referred to :—

(1) *Cartro v. The Queen,* 6 A.C. 229.

(2) *Andrews v. Director of Public Prosecutions* (1937) A.C. 576.

(3) *Emperor v. Bali Ram Nayappa.*

(4) *R. v. Trainer,* 4 F. and F. 105.

(5) *R. v. Beng,* 4 F. and F. 504.

CRIMINAL TRIAL.

E. N. Griffith Jones and A. J. Grattan Bellew for the Public Prosecutor.

P. J. D. Regester for the Accused.

Spenser-Wilkinson, J. : — At the outset of this case Counsel for the defence submitted that the accused had been guilty of only one offence and should therefore be charged and punished upon one charge only. After hearing arguments on this submission I gave an oral ruling to the following effect :—

> "In this case the accused is charged with six separate charges, each of which alleges that he caused the death of a named person at 8.30 p.m. on the 26th December, 1946, at Batu Road by doing a rash act not amounting to culpable homicide, to wit, by driving a motor lorry No. BA486330 rashly. The particulars of rashness given in each charge are word for word the same, and in fact the only difference between each of these charges is in the name of the person whose death is alleged to have been caused.
>
> "I have been asked to give a ruling as to whether a case of this kind falls within the provisions of the first paragraph of section 71 of the Penal Code so as to render the accused liable to punishment for only one of the offences charged. I have come to the conclusion that where a person is driving a motor vehicle rashly, and in so doing simultaneously knocks down several persons thereby causing the death of more than one of them, then, in my opinion, there is only one offence, and it seems to me that it would be proper in such a case to frame one charge to the effect that the accused caused the death of A, B, C, etc. by a rash act and was thereby punishable under section 304A of the Penal Code.